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REPORTING UNDER SECTION 157 OF *THE HIGHWAY TRAFFIC ACT*

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In September, 2014, the Manitoba Law Reform Commission published a Report for Consultation on Reporting Under Section 157 of *The Highway Traffic Act*, and welcomed comments on the nine provisional recommendations contained therein. The Commission provided a period of six weeks by which to receive comments from interested individuals and organizations. The Commission is grateful to those who provided their comments: College of Physicians and Surgeons; The College of Physiotherapists of Manitoba; and The Canadian Medical Protective Association, as well as individual physicians and legal counsel. All feedback was given careful consideration in finalizing this report.

The views expressed in this report are those of the Manitoba Law Reform Commission and do not necessarily represent the views of those individuals who have so generously assisted the Commission in this project.

CHAPTER 1: INTRODUCTION

A. Introduction

Section 157 of *Manitoba's Highway Traffic Act* ("HTA")[1] requires duly qualified medical practitioners and optometrists to report a person's details to the registrar of motor vehicles when the person holds a valid driver's licence and has a disease or disability that may be expected to interfere with the safe operation of a motor vehicle.

This mandatory reporting provision is meant to identify those who may be unfit to drive for health-related reasons, and to ensure that those who have a driver's licence meet the medical standards for driving. Its purpose is directly related to road safety, a significant policy concern in Manitoba.

While it serves an important function, section 157 is an exception to the general rule of confidentiality between health professionals and patients, and engages significant privacy considerations.

In addition, several recent Canadian studies have highlighted problems associated with mandatory reporting provisions such as section 157. There is evidence of under-reporting.[2] Many health professionals surveyed feel the law governing the reporting of medically unfit drivers is unclear.[3] Canadian specialist physicians have reported a lack of confidence in their ability to assess fitness to drive.[4] Research suggests that physicians are reluctant to discuss the dangers of driving with their patients, or are not logging such advice in their patients' medical records.[5] A majority of physicians surveyed in a recent study believe that mandatory reporting risks compromising their therapeutic relationship with the patient.[6]

While the Commission is not aware of Manitoba-specific empirical studies in this area, it is reasonable to assume that at least some of the findings described above apply equally in this province. In particular, the Commission notes that the number of reports filed under section 157 has remained relatively static, at approximately 4500 per year since 2011 while Manitoba's

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[1] *The Highway Traffic Act*, SM 1985-86, c3,s 157; CCSM c H60, s 157.

[2] Donald Redelmeier, Vikram Vinkatesh &Matthew Stanbrook, "Mandatory reporting by physicians of patients potentially unfit to drive" (2008), 2:1 Open MedicineE8-17, online:Open Medicinehttp://www.openmedicine.ca/article/viewArticle/141/110.

[3] *Ibid*; A.V. Louie et al, "Fitness to drive in patients with brain tumours: the influence of mandatory reporting legislation on radiation oncologists in Canada" (2012), 19:3 Current Oncology e117, online: Current Oncology < http://www.current-oncology.com/index.php/oncology>.

[4] Shawn Marshall et al, "Determining Fitness to Drive in Older Persons: A Survey of Medical and Surgical Specialists" (2012), 15:4 Canadian Geriatrics Journal 101.

[5] A.V. Louie et al, "Assessing fitness to drive in brain tumour patients: a grey matter of law, ethics and medicine" (2013) 20:2, Current Oncology 90 at 94.

[6] Raymond W Jang et al, "Family Physicians' Attitudes and Practices Regarding Assessments of Medical Fitness to Drive in Older Persons" (2007) 22 Society of General Internal Medicine 531 at 535, online: National Center for Biotechnology Information <. http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1829420/>.

population has aged over time.[7] As many of the health-related conditions that affect driving are more prevalent in older age,[8] this figure suggests that the problem of under-reporting does exist in Manitoba.

In this report, the Commission will consider ways to improve the effectiveness of the reporting system contemplated by section 157 of *The Highway Traffic Act*, with reference to the law in other jurisdictions, academic writing, and the input of interested persons. Its efforts will focus on both the clarity of the legislative provision and its interaction with accepted legal principles of confidentiality and privacy.

Compliance with section 157 of the HTA is a complex issue and is influenced by many factors. Recent academic research, for example, suggests that enhanced professional education programs and communication tools can significantly improve compliance. [9] Recognizing its mandate to improve the law of Manitoba, and the limited scope of this project, the Commission will focus on possible changes to the legislative language rather than the broader administrative and regulatory environment in which the provision operates.

Chapter 2 of this report provides background to the problem by describing the section 157 reporting system in greater detail and discussing relevant case-law. Chapter 3 sets out the Commission's recommendations for reform to improve the clarity and effectiveness of the legislation. Chapter 4 considers the interaction of the section 157 reporting system and established principles of confidentiality and privacy. In Chapter 5, the Commission offers a draft section 157(1) which incorporates some of its proposed amendments. Chapter 6 is a summary of the Commission's recommendations.

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[7] According to a Population Report published by Manitoba Health on June 1, 2013, the number of residents in Manitoba aged 65 or older increased from 167,712 in 2009 to 184,444 in 2013. Online: http://www.gov.mb.ca/health/population/pr2013.pdf.

[8] Canadian Medical Association, *CMA Driver's Guide, Determining Medical Fitness to Operate Motor Vehicles*, 8th ed , at 24, online: The Canadian Medical Association https://www.cma.ca/En/Pages/drivers-guide.aspx.The CMA describes" a variety of age-related changes in sensory input, cognition and motor output which can affect driving safety", at 25.

[9] See Jamie Dow and Andre Jacques, "Educating Doctors on Evaluation of Fitness to Drive: Impact of a Case-Based Workshop (2012) 32 Journal of Continuing Education in the Health Professions 68, online: National Center for Biotechnology Information <http://www.ncbi.nlm.nih.gov/pubmed/22447713>. The authors describe a significant rise in doctor initiated fitness to drive reports in the province of Quebec following a Continuing Medical Education program. See also Jamie Dow, "Commentary: Evaluation of Driver Fitness- The Role of Continuing Medical Education" (2009) 10 Traffic Injury Prevention 309.

CHAPTER 2- BACKGROUND

B. Overview of the Reporting System

Manitoba Public Insurance ("MPI") is Manitoba's public motor vehicle insurer and driver's licensing authority. Among its many other responsibilities, it is charged with ensuring that all those individuals who are licensed to drive in Manitoba are medically fit to do so. It may receive information about licensees' medical fitness to drive from a variety of sources, including a report from an optometrist or qualified medical practitioner pursuant to section 157 of the HTA.

The purpose of a report under section 157 is to notify MPI's registrar of motor vehicles about the medical condition of a licensee which may interfere with his or her ability to drive. Once MPI receives a section 157 report, it will typically require additional information from the licensee before making a licensing decision. It may request a medical report under section 18(1) of *The Drivers and Vehicles Act*, a vision test, a driving test, or a driving assessment. On review of the relevant information, the registrar makes a decision about whether to allow the licensee to keep driving, place restrictions on the licence, reclassify the licence to a lower class, or suspend the licence.[10] It is important to emphasize that MPI makes all licensing decisions, and that a section 157 report does not of itself determine a person's legal status to drive.

In Manitoba, policies for assessing medical fitness to drive are based on *The Medical Standards for Drivers*, published by the Canadian Council of Motor Transport Administrators ("CCMTA").[11] These standards were updated in 2013 to reflect the CCMTA's commitment to:

- anchor its medical standards on the best-evidence available
- focus on functional ability to drive rather than medical diagnosis, and to
- respond to case law establishing that Canadian authorities must individually assess drivers.[12]

The CCMTA standards inform both the decision of the health practitioner or optometrist to submit a report under section 157 of the Act, and the actions and licensing decisions of the registrar of motor vehicles.

The professionals who bear the reporting obligation under section 157 of the Act are also guided by their respective rules of professional conduct and other materials published by their professional associations.[13]

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[10] See Manitoba Public Insurance, *Guideline on Medical Conditions and Driving*, online: Manitoba Public Insurance < https://www.mpi.mb.ca/en/PDFs/MedicalConditionsDriving.pdf>.

[11] Canadian Council of Motor Transport Administrators, *Determining Fitness to Drive in Canada-September 2013* (2013), online: Canadian Council of Motor Transport Administrators <http://ccmta.ca/en/publications/resources-home/category/medical-standards-for-drivers> [CCMTA].

[12] *Ibid*, p 2. On the need to individually assess drivers, see *British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)*, 1999 3 SCR 868.

a) Section 157 of The Highway Traffic Act

Section 157 was added to *The Highway Traffic Act* in 1985.[14] Before that date, an applicant for a license was required to indicate if he or she had a condition that would likely cause the driver to be a source of danger to the public. The Registrar could require a medical report and impose restrictions, suspend or cancel a license if satisfied that the applicant could be a source of danger to the public.[15] A medical review committee was established to hear appeals from the registrar's decisions.[16]

Section 157 (1) of the HTA requires a duly qualified medical practitioner or optometrist to report to the registrar of motor vehicles the information of a person attending on that medical practitioner or optometrist who is the holder of a valid driver's licence and who, in the professional's opinion, has a disease or disability that may be expected to interfere with the safe operation of a motor vehicle.

Section 157(2) confirms that there is no right of action against a doctor for furnishing a report under section 157(1).

Section 157(4) establishes a medical review committee which hears appeals concerning, among other things, license suspensions, cancellations and restrictions under sections 19 and 23(2) of *The Drivers and Vehicles Act*. The committee may require an appellant to undergo further medical examinations and produce medical records. The committee may receive evidence and arguments from the appellant, the registrar or both, and may confirm, quash or vary the decision of the registrar. The committee's decision is final.

Section 157(7) provides that any report submitted under section 157(1) is privileged and for the information of the registrar and the medical review committee only. Except to prove compliance with subsection 157(1), the report is not admissible as evidence in any action or proceeding in court.

b) The Drivers and Vehicles Act

The Drivers and Vehicles Act (the 'DVA")[17] came into force in 2005 and contains many of the driver licensing provisions formerly found in *The Highway Traffic Act*. There is a close connection between section 157 of the HTA and the licensing provisions of the DVA.

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[13] Manitoba College of Physicians and Surgeons, *Code of Conduct*, online: Manitoba College of Physicians and Surgeons http://cpsm.mb.ca/about-the-college/by-laws-code-of-conduct-statements-and-guidelines/code-of-conduct.> [Code of Conduct]; Manitoba Association of Optometrists, By-Law 14/1 ,Section A.

[14] SM 1985-86, c3.

[15] SM 1970, c H60, s 25(5).

[16] SM 1971, c71, s 150.1(4).

[17] *The Drivers and Vehicles Act*, SM 2005, c 37, Sch A.

For example, an HTA section 157 report may trigger the requirement of a medical assessment under section 18(1) of the DVA. If, on the basis of a section 18(1) DVA report, the registrar is satisfied that a licensee has a disease or disability that may interfere with safely driving a motor vehicle, he or she may suspend, cancel or restrict the licence, or take other action under section 18(8) of the DVA. Licensing decisions of the registrar of motor vehicles under section 18(8) of the DVA are subject to appeal to the medical review committee established under section 157(7) of the HTA.[18]

C. Case-Law

Section 157 of the HTA imposes a mandatory legal obligation on certain health professionals to report patients who have a disease or disability that may interfere with the operation of a motor vehicle. Canadian courts and professional disciplinary bodies have considered the legal implications of complying, or failing to comply, with similar provisions in other provincial licensing statutes. This section of the report will review some of these cases, many of which highlight the shortcomings in the existing legislation.

a) Ontario Case-Law

There have been several reported Ontario decisions disposing of actions in negligence against physicians for failing to report a patient under Ontario's *Highway Traffic Act*.[19] Section 203 of that Act provides that:

> 203. (1) Every legally qualified medical practitioner shall report to the Registrar the name, address and clinical condition of every person sixteen years of age or over attending upon the medical practitioner for medical services who, in the opinion of the medical practitioner, is suffering from a condition that may make it dangerous for the person to operate a motor vehicle.

In *Ferguson Estate v. Burton*[20] the defendant claimed contribution and indemnity from a third party doctor in respect of a fatal motor vehicle accident. At the time of the accident, the defendant was aware that he had a medical condition which, when uncontrolled, made it unsafe for him to drive. He had not taken medication to control his condition on the day of the accident. The defendant claimed that his treating doctor was under a duty to warn him not to drive in accordance with the Canadian Medical Association's guidelines, and that the doctor was in breach of his duty to report to the registrar of motor vehicles.

The court dismissed the action against the physician. The judge accepted the physician's testimony that he believed the defendant's condition was controlled by medication and had no reason to believe the defendant would not follow his medical advice. On that basis, the

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[18] *Ibid.*, s 19.
[19] *Highway Traffic Act*, RSO 1990, c H8.
[20] (1987), 50 MVR 197, (Ont. Sup.Ct.).

physician was not of the opinion that the defendant was suffering from a condition that might make it dangerous for him to operate a motor vehicle. The court also accepted that the third party physician, a family doctor, was entitled to rely on the failure of three specialists in neurology to give any warning to the defendant that he should not drive.

In *Toms v. Foster*[21] the Ontario Court of Appeal upheld findings of liability in negligence against a family doctor and a neurologist who treated the defendant. The defendant suffered from a neurological condition making it unsafe for him to drive. He caused a motor vehicle accident which seriously injured the plaintiff. The finding of liability against the physicians was based on their failure to report the defendant to the Registry of Motor Vehicles, as required by Ontario's *Highway Traffic Act*. The Court of Appeal rejected the physicians' argument that the obligation to report is discretionary. It also rejected the family doctor's argument that he felt the defendant's condition was temporary and that he could be trusted not to drive when warned. The Court remarked that the statute allows for no exceptions- once the condition is recognized, the duty to report is mandatory. The Court characterized the doctor's obligation to report under the statute as a duty owed to members of the public and not just the patient.

The Ontario Court of Appeal also upheld a finding of liability in negligence against two physicians in *Spillane v. Wasserman*[22]. The physicians had failed to report a driver with a medical condition causing seizures, making him unfit to drive. The court held that the physicians were liable for negligently failing to report under the statute, and failing to follow the minimum standards set by the CMA and the Ontario College of Physicians and Surgeons.

In *Lax v. Denson* [23]the court dismissed an action in negligence against a physician for failing to report a medical condition to the Registry of Motor Vehicles. The plaintiff suffered injuries as a result of a motor vehicle accident, and sued his own family doctor. The court found that the driver's licence would not have been suspended in time to prevent the accident, even if the physician had submitted a report. The court accepted evidence that the average delay between reporting of information and confirmation of its receipt was 88 days. The failure to report in this case did not cause or contribute to the accident. The result may have been different in Manitoba, where, according to information provided by MPI, the average delay between reporting and confirmation of receipt is between three and four days.

A 2000 decision of the Ontario Information and Privacy Commission highlights some other important factors in respect of mandatory fitness to drive reporting. In Order PO-1792, [2000] O.I.P.C., Appeal PA-990393-1, the Commissioner ordered the disclosure of a medical report submitted by a physician under Ontario's *Highway Traffic Act*, over the objections of the Ministry of Transportation and the physician who made the report.

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[21] (1994), 7 MVR (3rd) (Ont CA).
[22] (1998), 41 CCLT (2d) 292.
[23] (1997), 32 OR (3d) 383 (Gen Div).

The Ministry opposed the disclosure because it could reasonably be expected to expose the physician to physical danger. The physician had expressed concern for her safety should the report be disclosed to the patient. The Ministry also submitted that disclosure might be a deterrent to physicians who must comply with their statutory obligation to report. The Ministry relied on the section of the *Highway Traffic Act* that attaches privilege to medical reports provided under the Act.

The Commissioner rejected these arguments and found that Ontario's *Freedom of Information and Protection of Privacy Act* in force at the time prevailed over a confidentiality provision in any other Act unless expressly provided otherwise.

b) Alberta Case-Law

Alberta's *Traffic Safety Act* authorizes physicians, optometrists, or other health care providers to provide information to the licensing authority about their patients' medical fitness to drive, but does not make reporting a mandatory requirement.[24]

The Alberta Court of Queen's Bench commented on Alberta's legislation in *Bakker v Van Santen*[25]. The third party defendant, an optometrist, had not warned his visually impaired patient not to drive and had not reported the patient to the licensing authority. The patient was later involved in serious motor vehicle accident.

Without deciding the issue, the court commented that the extent of the optometrist's duty of care to a third party injured by his patient was unsettled. When contemplating the existence of a duty of care in these circumstances, the court found it significant that Alberta's legislation does not make it mandatory to report a patient who may be unfit to drive, unlike Ontario's *Highway Traffic Act*.

c) Manitoba Case-Law

In Manitoba, there has been little judicial consideration of section 157 of the HTA. It is mentioned in only one reported decision. *Yadollahi v. Ghahferokhi*[26] concerned the quantum of support payments in a case of marital breakdown. The husband had left his job as a truck driver on medical grounds, and argued that the support payments should be adjusted accordingly. The court found the medical evidence did not support the husband's position that he was unable to drive on the highway. The court went on to find that, under section 157(1) of *The Highway Traffic Act*, the husband's physician would have had to report to the licensing authorities any disease or disability rendering it unsafe for the husband to drive. The court drew an inference from the absence of any such report.

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[24] *Traffic Safety Act*, RSA 2000, c T-6, ss 60-60.1.
[25] 2003 ABQB 921; 127 ACWS (3d) 237.
[26] 2005 MBQB 36; 204 Man R (2d)1.

d) Disciplinary Proceedings

In addition to attracting potential liability in negligence, the reporting requirement may also give rise to disciplinary proceedings.

The Canadian Medical Protective Association ("CMPA") recently reviewed 67 closed medico-legal files concerning fitness to drive reporting for the years 2005 to 2009.[27] Half of these were legal actions or threats of legal action for failing to submit a report. The other half consisted of complaints to disciplinary bodies on the ground that the physician should not have submitted a report. The CMPA concludes that in most cases the courts and disciplinary bodies dismiss these actions and complaints against physicians.

A review of disciplinary actions before the Manitoba College of Physicians and Surgeons indicates that there have been no recent proceedings in connection with the mandatory reporting requirement.

[27] The Canadian Medical Protective Association, "Reporting Patients with Medical Conditions Affecting their Fitness to Drive" (2010, revised 2011), online: The Canadian Medical Protective Association, http://www.cmpa-acpm.ca/cmpapd04/docs/resource_files/perspective/2010/04/com_p1004_1-e.cfm at 1-2.

CHAPTER 3-STRENGTHENING THE REPORTING OBLIGATION

The cases discussed in Chapter 2 of this report highlight some of the complexities of a mandatory reporting system such as that contemplated by section 157 of Manitoba's *Highway Traffic Act*. These cases illustrate a lack of clarity about when to report, who is responsible for reporting and how the duty to report interacts with privacy and access to information legislation. The discussion in the Alberta Court of Queen's Bench decision in *Bakker* [28]signals a critical debate in the academic literature around the relative effectiveness of mandatory versus discretionary reporting.

In this chapter, the Commission will make recommendations for reform with a view to improving the clarity of the legislation and enhancing its effectiveness. The focus will be on proposed legislative changes to clarify when a duty to report is triggered under section 157 and who is responsible for reporting.

However, before addressing possible changes to the statutory language, this chapter will consider the question of mandatory versus discretionary reporting. This debate is extensively argued in the academic literature, and may be relevant to the overall effectiveness of the reporting scheme.

D. Mandatory versus Discretionary Reporting

Manitoba is one of ten Canadian provinces and territories to provide for mandatory reporting by health care professionals. Reporting is discretionary in Alberta, Nova Scotia and Quebec. In British Columbia, health care professionals are obligated to report to the licensing authority only if the patient continues driving after being warned not to drive.[29]

Outside Canada, mandatory reporting is much less common. In the United States, only six states provide for mandatory reporting, often in relation to specific symptoms or conditions.[30] Reporting is not mandatory in the United Kingdom or many countries in Western Europe.[31] It is mandatory in only two Australian states and is voluntary in New Zealand.

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[28] *Supra* note 26.

[29] *Motor Vehicle Act*, RSBC 1996, c 318, s 230. Section 21 of the *Motor Vehicle Amendment Act, 2010* would repeal the current section 230 of British Columbia's *Motor Vehicle Act*, and replace it with a provision that makes it mandatory to report for certain conditions, and discretionary in other cases. *The Motor Vehicle Amendment Act, 2010* was enacted in 2010 but is not yet in force.

[30] In California, Delaware, Nevada and New Jersey, for example, physicians are required to report any patient with a disorder characterized by lapse of consciousness, such as seizure disorders and Alzheimer's disease. In Pennsylvania, physicians are required to report patients with neuropsychiatric conditions. As cited in Mark Rappaport et al, "Sharing the Responsibility for Assessing the Risk of the Driver with Dementia", (2007) 177 CMAJ 599.

[31] See General Medical Council, "Confidentiality: Reporting Concerns about Patients to the DVLA or the DVA", online: http://www.gmc-uk.org/Confidentiality_reporting_concerns_Revised_2013.pdf_52091821.pdf; European Commission, Mobility and Transport, Road Safety, online:

Regardless of the nature of the statutory obligation, a duty to report is also grounded in a health professional's ethical responsibilities. Manitoba's physicians and surgeons are ethically bound to consider first the well-being of the patient,[32] but also to accept a share of the profession's responsibility to society in matters relating to public health, health education, environmental protection, legislation affecting the health of well-being of the community, and the need for testimony at judicial proceedings.[33]

The Canadian Medical Association's Code of Ethics likewise requires the physician to consider the well-being of society in matters affecting health.[34]

There is an extensive literature comparing the merits of voluntary and mandatory reporting systems. Arguments against mandatory reporting are that it encourages concealment of symptoms,[35] interferes with patient-physician relationships,[36]and does not necessarily result in safer roads.[37]

Several professional organizations have taken strong positions opposing mandatory reporting laws, including the Australian Medical Association and the American Academy of Neurology.[38] At a 1998 symposium of North American medical and transportation experts, there was a near-uniform rejection of mandatory reporting laws in respect of epilepsy-related impairments.[39]

A 2007 survey of Canadian family physicians indicates that 72.4% agreed that physicians should be legally responsible for reporting unsafe drivers to the licensing authorities.[40] By contrast, only 44% of neurologists surveyed in another recent study were in favour of mandatory reporting.[41]

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http://ec.europa.eu/transport/road_safety/specialist/knowledge/old/what_can_be_done_about_it/assessing_the_fitness_to_drive.htm.

[32] Code of Conduct, *supra* note 13, s 1.

[33] *Ibid*, s 33.

[34] Canadian Medical Association, *Code of Ethics*, online: Canadian Medical Association http://policybase.cma.ca/dbtw-wpd/PolicyPDF/PD04-06.pdf, s 42.

[35] Ernest Somerville, Andrew Black & John Dunne, "Driving to Distraction-Certification of Fitness to Drive with Epilepsy" (2010) 192 Medical Journal of Australia 342-344.

[36] A.V. Louie et al, "Fitness to Drive in Patients with Brain Tumours: the Influence of Mandatory Reporting Legislation on Radiation Oncologists in Canada" (2012) 19 Curr. Oncol. 117.

[37] Richard McLachlan, Elout Starreveld & Mary Ann Lee, "Impact of Mandatory Physician Reporting on Accident Risk in Epilepsy, (2007) 48 Epilepsia 1500. A study of cardiac patients produced similar results: see Simpson et al, "Impact of a Mandatory Physician Reporting System for Cardiac Patients Potentially Unfit to Drive" (2000) 16 Canadian Journal of Cardiology 1257.

[38] Australian Medical Association, "The Role of the Medical Practitioner in Determining Fitness to Drive Motor Vehicles – 2008" online: Australian Medical Association https://ama.com.au/position-statement/role-medical-practitioner-determining-fitness-drive-motor-vehicles-2008; D.Bacon et al, "American Academy of Neurology position statement on physician reporting of medical conditions that may affect driving competence" (2007) Neurology 68 1177, online: American Academy of Neurology http://www.neurology.org/content/68/15/1174;

[39] GM Remillard, BG Zifkin, F Andermann, "Epilepsy and Motor Vehicle Driving: A Symposium Held in Quebec City, November 1998, (2002) 29 Canadian Journal of Neurological Sciences online: National Center for Biotechnology Information < http://www.neurology.org/content/68/15/1174>.

[40] Jang, *supra* note 6.

[41] Louie, *supra* note 36.

Arguments in favour of mandatory obligations are that physicians in mandatory reporting jurisdictions are much more likely to submit a report,[42] and that relying on the initiative of drivers and family members to report is fallible.[43] There is also an argument that mandatory reporting may facilitate the relationship between health professionals and their patients. Where the obligation is mandatory, the health professional has no choice but to file a report in the appropriate circumstances. The decision to file a report in a mandatory reporting scheme is arguably less personal and subjective, making the decision easier to explain and more tolerable to the patient.

The Alberta Court of Queen's Bench in *Bakker* suggested that the mandatory nature of the reporting obligation may also be a factor in determining a health professional's liability in cases where a report should have been filed but was not. No other Canadian case has addressed this issue, although a leading authority on the law of torts, Professor John Irvine, has commented in the following terms:

> "...the expanding scope of modern Canadian negligence law makes it quite conceivable that the stricken driver's physician might, even without regard to the statutes, be held to have broken a duty of care owed to the pedestrian or other road-user who was injured. The breach of the statutes in those provinces where the reporting of unfit drives is mandated, would certainly fortify the court's resolve to make the physician liable in such a case."[44]

The Commission's view is that, while a mandatory duty to report is relevant to establishing a duty and standard of care, it is only one of many factors a court would consider in deciding on liability issues in these circumstances. A negligent physician or optometrist could also conceivably be found liable in a discretionary reporting jurisdiction.

The Commission does not propose to recommend a departure from Manitoba's mandatory reporting system. The choice between mandatory and discretionary systems is an important policy decision, involving a variety of competing interests and extending beyond the scope of this project. As the legislative purpose of section 157 is to notify MPI of drivers with conditions which make it potentially unsafe for them to drive, it seems logical that the obligation be mandatory.

For the purpose of this report, a more pertinent question is whether section 157 creates a truly mandatory requirement; or do the ambiguities and gaps in the legislation effectively undermine compliance? The following section of this report will discuss possible amendments to clarify and strengthen the reporting obligation.

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[42] *Ibid;* Robert Solomon, Erika Chamberlain & Suzie Chiodo, "Silence May Not Be Golden: A Review of Health Professionals' Statutory Obligations to Report Unfit Drivers" (2011) 19 Health Law Review 5 [Solomon].
[43] Redelmeier, *supra* note 2.
[44] John Irvine, Philip Osborne, Mary Shariff, *Canadian Medical Law, An Introduction for Physicians, Nurses and other Health Care Professionals*, 4th Ed (Toronto: Thomson Reuters Canada Limited, 2013) at 252.

E. Improving Legislative Clarity

Section 157(1) of *The Highway Traffic Act* reads as follows:

157(1) A duly qualified medical practitioner or optometrist shall report to the registrar the name, address and disease or disability, or any significant change in a previously observed disease or disability, of any person attending upon the duly qualified medical practitioner or optometrist for examination or treatment who is the holder of a valid driver's licence and who, in the opinion of the duly qualified medical practitioner or optometrist, has a disease or disability that may be expected to interfere with the safe operation of a motor vehicle that may be operated with the class of licence or permit held by the person.

Phrases such as "disease or disability" and "may be expected to interfere with" create ambiguity about the circumstances that trigger a section 157 reporting obligation. The case-law discussed in chapter 2 of this report also confirms a level of uncertainty about who is responsible for filing the report under section 157. In addition, the statute's requirement that a report only be submitted in respect of a person holding a valid driver's licence creates a potential loophole in the reporting scheme.[45]

This section of the report will address problems of clarity and gaps in the legislation under the following three headings:

1.) The Triggers for a Section 157 Report
2.) The Reporting Responsibility
3.) Improvements in Statutory Organization.

a) The Triggers for a Section 157 Report

Section 157 requires a report when in the opinion of a duly qualified medical practitioner or optometrist, a patient has a disease or disability that may be expected to interfere with the safe operation of a motor vehicle.

In the Commission's view, improvements could be made to the clarity of the triggering provisions, beginning with the use of the term "disease or disability".

i. "Disease or Disability"

Section 1 of the *Highway Traffic Act* defines "disease or disability" with reference to the definition in *The Drivers and Vehicles Act*. Section 1 of *The Drivers and Vehicles Act* gives the following definition: "disease or disability" includes a disease or disability in the form of alcoholism or drug addiction, or an alcohol-related or drug-related problem."

The DVA definition specifies types of conditions that are included in "disease or disability" but otherwise does not add meaningfully to a reader's understanding of the term.

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[45] The requirement that the patient hold a valid driver's licence will be discussed in Chapter 3 of this report.

The original section 157 in the 1985-85 *Highway Traffic Act* referred to a "clinical condition".[46] This was replaced by the term "medical condition" in 1991.[47] In the 1995 amendment to the Act, all references to "medical condition" were repealed and replaced with the current term "disease or disability".[48]

As a preliminary observation, the use of the term "disease or disability" might seem to limit the circumstances in which a report must be filed under section 157. A technical reading of the section would require a diagnosis of a disease or disability before the reporting obligation is triggered. There are circumstances, however, in which no diagnosis has been made but it is nevertheless clear to the health professional that the patient suffers from an impairment which may affect the ability to drive. The case of a sudden, unexpected blackout is an example of this type of situation.

Moreover, the term disability in particular is subject to several possible interpretations. The term takes on different meanings depending on the context in which it is used. A legal disability, for example, refers to a minor or a person who is mentally incompetent or incapable of managing his or her affairs, whether or not so declared by a court.[49] In the context of insurance, the term disability generally refers to an impairment that prevents a person from performing his or her own occupation, or any other occupation. Canada's *Income Tax Act* provides a disability tax credit for a person with a severe and prolonged impairment in physical or mental functions.

The World Health Organization ("WHO") describes the complexity of the term "disability" in the following paragraphs:

> Disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations.
>
> Disability is thus not just a health problem. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives.[50]

In the introduction to the International Classification of Functioning, Disability and Health (ICF), the WHO recognizes that "Disability is a universal human experience, sometimes permanent, sometimes transient. It is not something restricted to a small part of the population."[51]

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[46] SM 1985-85, c 3, s 157(1).
[47] SM 1991-92, c 25, s 42.
[48] SM 1995 c 31, s 11(1).
[49] Court of Queen's Bench Rules, Manitoba Regulation 553/88, s 1.03.
[50] World Health Organization, Health Topics-Disabilities, online: World Health Organization <http: www.who.int/topics/disabilities/en.

The United Nations Convention on the Rights of Persons with Disabilities does not define the term "disability" but recognizes that it is an evolving concept resulting from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.[52]

Not only is the term "disability" ambiguous in itself, but there is also an important distinction between it and the term "disease".

The Concise Oxford English Dictionary defines "disability" as "a physical or mental condition that limits a person's movements, senses or activities."[53] This definition implies a functional limitation. A physical or mental condition is not itself a disability, but may result in a disability if it impairs function.

Canadian courts have recognized this distinction. In *Corock v Orion Insurance Co*, the British Columbia Supreme Court aptly remarked that "disability" means not the injury itself, but that which the injury causes, i.e. prevention of employment." [54]

Disability implies a functional lack of ability to perform a particular task, rather than the underlying medical condition which may result in functional impairment. Section 157 already contemplates a functional test by requiring that the disease or disability "be expected to interfere with the safe driving of a motor vehicle". The use of the term "disability" in this section is arguably redundant, adding to the provision's ambiguity.

To improve the clarity of the legislation, the Commission recommends that it employ a more readily definable term than "disease or disability".

Earlier versions of the reporting obligation under section 157 have referred to a "clinical condition"[55] and a "medical condition"[56] The statutes of several Canadian jurisdictions trigger the reporting obligation when a person has a "condition" or "medical condition", including those of British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Prince Edward Island and Newfoundland and Labrador.[57]

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[51] World Health Organization, *Classifications, International Classification of Functioning, Disability and* Health (ICF), online: World Health Organization<,http: www. who.int/classifications/icf/icf_more/en>.
[52] United Nations, *Convention on the Rights of Persons with Disabilities*, Preamble, (e) (2009), online: United Nations Enable www.un.org/disabilities/convention/conventionfull.shtml.
[53] *Concise Oxford English Dictionary*, 11th ed (Oxford: Oxford University Press, 2004).
[54] [1969] I.L.R. 1-269, 68 WWR 149 (BCSC). See also *Martin v General Teamsters, Local 362*, 2011 ABQB 412 where the court confirms that "disability" under section 3.1 of the *Limitations Act*, RSA 2000, c L-121 "means more than injured or unwell".
[55] *The Highway Traffic Act*, SM 1985-85, c 3, s 157(1)
[56] *The Highway Traffic Amendment Act*, SM 1991-92, c 25, s 42. The term "medical condition" was replaced by the term "disease or disability" with the enactment of *The Highway Traffic Amendment Act* in 1995: SM 1995, c 31, s 11(1).
[57] *Determining Driver Fitness in Canada, supra* note 11, p 28.

The Canadian Council of Motor Transport Administrators uses the term "medical condition" in its *Medical Standards for Driving*, and defines it as follows:

> Medical condition is any injury, illness, disease or disorder that is identified in Part 2 of this document or that may impair the functions necessary for driving. Impairment resulting from medications and/or treatment regimes that have been prescribed as treatment for a medical condition are considered as medical conditions. General debility and a lack of stamina are also considered as medical conditions that may impair the functions necessary for driving.[58]

The Canadian Medical Association, CMA *Driver's Guide, Determining Medical Fitness to Operate Motor Vehicles* also uses the generic term "medical condition".[59]

MPI's policies for assessing medical fitness to drive are based on the CCMTA *Medical Standards for Driving*.[60] This close connection between the *Medical Standards for Driving* and the reporting regime established in Manitoba's legislation suggests that the same terminology should be used in both.. The use of consistent terminology ought to provide greater clarity and predictability in the reporting regime.

The Commission is satisfied that the term "medical condition" is broad enough to capture those circumstances in which it was intended that a section 157 report be submitted, and more straightforward for practitioners to apply and interpret than the term "disease or disability". For greater certainty the Commission also recommends that the term "medical condition" be defined in the legislation with reference to the CCMTA definition. A direct legislative reference to the CCMTA will help to guide health care professionals in fulfilling the statutory duty imposed by section 157, and will ensure that the definition keeps up with best-available evidence. To ensure consistency within the overall statutory scheme, *The Drivers and Vehicles Act* should be reviewed to ensure that the term "medical condition" is an appropriate replacement for "disease and disability" throughout the statute.

Recommendation #1

Section 157 of *The Highway Traffic Act* should be amended to delete the term "disease or disability" and replace it with "medical condition". *The Highway Traffic Act* should define the term "medical condition" with reference to the definition in *The Medical Standards for Driving*. . *The Drivers' and Vehicles Act* should be reviewed to ensure that the term "medical condition" can appropriately replace "disease and disability" in all sections.

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[58] CCMTA, *supra* note 11 at 28.

[59] Canadian Medical Association, *CMA Driver's Guide, Determining Medical Fitness to Operate Motor Vehicles*, 8th edition, online: Canadian Medical Association < https://www.cma.ca/En/Pages/drivers-guide.aspx>.

[60] Manitoba Public Insurance, Medical Conditions and Driving, 2013, online: Manitoba Public Insurance < https://www.mpi.mb.ca/en/PDFs/MedicalConditionsDriving.pdf, p 9.

ii. "May Be Expected to Interfere With"

Section 157 of the *Highway Traffic Act* requires a duly qualified medical practitioner or optometrist to submit a report when, in his or her opinion, the patient suffers from a disease or disability that may be expected to interfere with the safe operation of a motor vehicle. The term "may be expected to" is ambiguous and introduces an element of subjectivity to the triggering provision, making it more difficult for practitioners to interpret and undermining consistent application.

Section 157 seems to require the practitioner to form both an opinion and an expectation about the effect of a person's disease or disability on their ability to drive. The provision does not make clear how, if at all, the expectation concerning a person's driving ability is different from the practitioner's opinion. Is there an external standard to be applied to determine if the person's condition may be expected to interfere with safe driving? Or is it the practitioner's expectation that is relevant in this context? If the latter, it is likely that practitioners may have varying expectations concerning the effect of certain conditions on driving ability.

The use of the term "expected to" introduces an additional test to the provision, without any clarity about its meaning or how it is to be applied. Section 14 of *The Drivers and Vehicles Act* requires an applicant to declare a disease or disability which may interfere with safe driving, but does not include the additional qualifier that the disease or disability "may be expected" to interfere with safe driving. Neither does section 18 of the DVA, which provides for the preparation of a medical report at MPI's request.

The term "interfere with" may also create some problems of interpretation. It is defined variously as:

- To create a hindrance or obstacle[61]
- To prevent from continuing or being carried out properly[62]
- To intervene[63]

The term "interfere with" is used consistently in the medical provisions of *The Drivers and Vehicles Act*, with the exception of section 18.1 which requires a declaration when a disease or disability may **affect** the licensee's ability to drive (emphasis added).

Other provincial reporting statutes use a variety of terms to describe the connection between the patient's condition and his or her ability to drive. The Yukon *Motor Vehicles Act* refers to a condition that may adversely affect the person's operation of a motor vehicle. Alberta's *Traffic Safety Act* refers to a condition that impairs the patient's ability to safely operate a motor vehicle.

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[61] The Free Dictionary by Farlex, online: The Free Dictionary http://www.thefreedictionary.com/interfere.
[62] *Concise Oxford English Dictionary*, *supra* note 53.
[63] *Ibid.*

Statutes in Saskatchewan, Prince Edward Island, Ontario and British Columbia all refer to a condition which makes it dangerous to drive.

The Commission recommends that the language of section 157 be amended to repeal the phrase "may be expected to interfere with the safe operation of a motor vehicle" and replace it with the phrase "may impair the ability to operate a motor vehicle safely". The term impairment is more relevant to the health care community, and is consistent with the overall purpose of the statutory scheme which is to identify impairments to safe driving and ways of compensating for those impairments.

Unlike Manitoba's legislation, which requires only that the condition **may** impair a person's ability to drive, some other jurisdictions require a greater level of certainty on the part of the health professional making the report. In British Columbia, for example, a report is required if the person has a medical condition **that makes it dangerous to drive**. In the Northwest Territories and Nunavut, a report is required if the patient **is unable to operate a motor vehicle in a safe manner**. In Nova Scotia, a report may be provided if the person suffers from infirmities or disabilities **rendering it unsafe to drive**. In Saskatchewan, a report is required if the patient's condition **will make it dangerous to drive**.

The Commission does not recommend departing from the current requirement that the condition may impair a person's ability to drive. Imposing an obligation on health professionals to reach a more definite conclusion about a person's ability to drive is unreasonable and could undermine the goal of increasing reporting in appropriate cases.

Recommendation #2

Section 157 of *The Highway Traffic Act* should be amended to delete the term "may be expected to interfere with" and replace it with "may impair".

iii. Reasonableness

The current language of section 157 is so broad as to potentially capture nearly every possible medical condition. While the provision must be comprehensive enough to achieve its goal of identifying risks to public safety on the roads, it currently provides little guidance to the practitioner about when a report is really necessary.

A clinical example from the practice of optometry helps to illustrate this problem. It is reportedly common for a patient to fail a visual field test, used for assessing the risk of glaucoma, on the first try. In a large number of cases, the same patient will pass a second visual field test. This raises a question of whether the optometrist is required to file a report under section 157 if a person fails the first test and does not return for a second test.

The answer will largely depend on what the optometrist believes is reasonable in the circumstances, considering *the first test results and the patient's optical* and medical history. In some cases, it may be reasonable to submit a section 157 report after the first failed test, and in others it may not.

This example illustrates the importance of introducing the concept of reasonableness into the section 157 reporting requirement. It is not every medical condition that will trigger a report, but only those which in the reasonable opinion of the practitioner may impair the patient's ability to operate a motor vehicle safely.

Several other provincial reporting statutes include a reasonableness requirement .The New Brunswick *Motor Vehicle Act*, the Northwest Territories *Motor Vehicles Act* and the Nunavut *Motor Vehicles Act* all refer to the reasonableness of the professional's opinion concerning the effect of the patient's condition on his or her ability to drive.[64]

The Commission is in favour of introducing the concept of reasonableness into the section 157 reporting requirement. This qualifier provides additional guidance to the health professional, clarifying that it is not every condition that must be reported but only those which might reasonably affect the patient's ability to drive. A statutory requirement that the opinion be reasonable may also reassure patients concerned about over-zealous reporting.

Recommendation #3

Section 157 of *The Highway Traffic Act* should be amended to require that the health care professional filing the report has formed a reasonable opinion about the person's condition and its effect on his or her ability to operate a motor vehicle safely.

b) The Reporting Responsibility

Section 157 imposes a reporting obligation on duly qualified medical practitioners and optometrists. In this respect the provision may be both over-inclusive and under-inclusive.

i. Duly Qualified Medical Practitioner

A duly qualified medical practitioner is defined in section 1(1) of *The Drivers and Vehicles Act* as an individual registered under *The Medical Act*. Section 6 of *The Medical Act*, at Appendix A, provides for the registration of medical practitioners, medical students, clinical assistants and physician assistants.[65]

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[64] *Motor Vehicle Act*, RSNB 1973, c M-17, s 309.1(1); *Motor Vehicles Act* , RSNWT 1988, c M-16, s 103(1); *Motor Vehicles Act*, RSNWT (NU)1988, c M-16, s 103(1).

[65] *The Medical Act*, RSM 1987 c M90; CCSM c M90, Appendix A.

Based on input it has received from the medical community, the Commission questions whether it is reasonable to impose a legal reporting obligation on medical students, clinical assistants and physician assistants, many of whom may not have the training or experience to form the requisite opinion concerning fitness to drive. This issue should also be examined in light of the coming into force of *The Regulated Health Professionals Act*.[66] The RHPA will eventually replace *The Medical Act*, and will contain the most current and accurate definitions relating to health care professionals.

ii. Other Health Care Professionals

By contrast, other health care professionals may be in a position to form an opinion about a patient's ability to drive but do not bear the reporting responsibility under section 157. Those with an autonomous practice such as chiropractors, physiotherapists and occupational therapists might fall into this category.

In British Columbia, the reporting obligation is extended to psychologists and nurse practitioners.[67] Under British Columbia's amended legislation, which is yet to come into force, occupational therapists would also have a duty to report.[68] In New Brunswick and Newfoundland and Labrador, nurse practitioners have a duty to report, in addition to medical practitioners and optometrists.[69] In the Northwest Territories and Nunavut, the obligation extends to nurse practitioners, registered nurses and temporary certificate holders under the *Nursing Profession Act*.[70]

The Commission does not propose to recommend an extension of the duty to report, which can only be done after consultation with the affected professional organizations. It takes this opportunity simply to highlight this potential legislative gap and to suggest that the Minister responsible for MPI give further consideration to this issue.

Recommendation #4

The duty to report under section 157 should be imposed on those health care professionals who are in a reasonable position to form an opinion about a person's fitness to drive. The current definition of duly qualified medical practitioner should be reconsidered with reference to the definitions of *The Regulated Health Profession Act*.

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[66] *The Regulated Health Professions Act*, SM 2009, c 15; CCSM c R117.
[67] The *Motor Vehicle Act, supra* note 29, c 230(1).
[68] The *Motor Vehicle Amendment Act, supra* note 29, s21.
[69] *Motor Vehicle Act, supra* note 64, s 309.1; *Highway Traffic Act*, RSNL 1990, c H-3, s 174.1.
[70] *Motor Vehicles Act*, RSNWT 1988, c M-16, ss 87.1 & 103.

iii. Multiple Health Care Providers

Some of the academic literature and survey data in this area of law identify a need for greater clarity about who should report when a person is being treated by multiple health care providers. In *Ferguson Estate v Burton*, described in Chapter 2 of this report, the court accepted that the third party physician, a family doctor, was entitled to rely in his defence on the failure of three specialists in neurology to give any warning to the defendant that he should not drive.

Although this issue may best be addressed through improved professional education and communication initiatives, the legislation should make clear that every person identified in the statute has an obligation to report. The British Columbia, Ontario, Prince Edward Island and Nova Scotia statutes all specify that every health care professional identified has a duty to report. Section 203 (1) of Ontario's *Highway Traffic Act* is an example:

203. (1) **Every legally qualified medical practitioner** shall report to the Registrar the name, address and clinical condition of every person sixteen years of age or over (emphasis added)

The Commission suggests that this small amendment would be a beneficial change to Manitoba's statute.

Recommendation #5

Section 157 of *The Highway Traffic Act* should make clear that every health care professional identified in the section has an independent duty to report.

c) Improvements in statutory organization

As the discussion in this report has demonstrated, there is a close connection between section 157 of *The Highway Traffic Act* and the medical requirements provisions of *The Drivers and Vehicles Act*. The section 157 report may lead to actions and licensing decisions taken under section 18 of *The Drivers and Vehicles Act*. Section 157(7) of *The Highway Traffic Act* creates the Medical Review Committee but its powers are found in section 19 of *The Drivers and Vehicles Act*.

The majority of the provisions concerning medical assessment and reports on fitness to drive appear in the DVA. Section 157 of the HTA is a stand-alone section, situated between provisions concerning traffic accident reports (section 155) and the confidentiality and treatment of accident reports (section 158).

To improve the clarity and transparency of the legislation, the Commission recommends that the connections between the two statutes be made clearer. The current legislative scheme does not indicate how the section 157 report fits within the overall licensing regime. The relevance of the

section 157 report and the role and function of the Medical Review Committee would not be apparent to a non-expert reader of *The Highway Traffic Act*.

The Commission suggests that the connections between the two statutes should be made clear for a person reviewing the legislation. This could be done through a statutory re-organization in which the section 157 provisions are included in *The Drivers and Vehicles Act*, or by a greater use of cross-referencing within the two statutes.

Recommendation #6

The Highway Traffic Act and *The Drivers and Vehicles Act* should be amended to make the connection between the medical assessment and reporting provisions in the two statutes more apparent.

CHAPTER 4- THE DUTY TO REPORT, CONFIDENTIALITY AND PRIVACY

In recent public opinion surveys, Canadians consistently rank protection of personal health information as a significant concern. In a 2012 survey, 60% of Canadians agreed that there are few types of personal information more important for privacy laws to protect than personal health information, and 35% felt they had less protection of personal health information in their daily lives than they did five years before.[71]

Earlier surveys reported that most Canadians want to control how their personal health information is collected, used and disclosed. This desire for control is driven by the public's sense of owning their personal health information; recognition of the information's potential monetary worth to private sector companies, and fear of possible adverse consequences associated with unauthorized or inappropriate disclosure.[72]

Against this backdrop of increasing public awareness and concern, it is all the more important that the reporting requirement in section 157 of *The Highway Traffic Act* preserve the confidentiality of personal health information to the greatest possible extent.

In this chapter, the Commission will offer provisional recommendations for the reform of section 157 to enhance the protection of privacy of personal health information within the mandatory reporting context. To better situate these recommendations for reform within the overall legal framework, the following section will provide an overview of the principles of confidentiality and privacy in connection with personal health information.

F. Confidentiality and Privacy

a) Common law duties of confidentiality and respect for privacy

Health care professionals have a legal duty of confidentiality. This duty has several sources including the common law, principles of equity, various statutory provisions, and the ethical codes governing health care professionals.[73]

The Supreme Court of Canada has confirmed that, "it is the patient's right that [his or her] secrets not be divulged; and that right is absolute unless there is some paramount reason overriding it."[74] More recently, the same court recognized the duty of doctors to "hold

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[71] *What Canadians Think, Electronic Health Information Privacy Survey 2012*, Final Report, April 16, 2012, Ipsos Reid, online: Canada Health Infoway https://infoway-inforoute.ca/index.php/resources..

[72] As cited in Lydia Wakulowsky, *Personal Health Information Protection Act, Implementing Best Privacy Practices*, Second Edition (Markham: Lexis Nexis Canada Inc, 2011), p5.

[73] William Flanagan, "Genetic Data and Medical Confidentiality"(1995) 3 Health Law Journal 269.

[74] *Halls v Mitchell* [1928] SCR 125 at 136..

information received from or about a patient in confidence."[75] Manitoba's Court of Queen's Bench has also recognized a common law duty of confidentiality on the part of physicians.[76]

Confidentiality is distinct from the concept of privilege. Privilege allows a patient to prevent his or her physician or optometrist from revealing in court confidential information communicated during professional treatment. The common law does not recognize a privileged status for doctor-patient communication, but it can be provided by statute as in the case of section 157(7) of *The Highway Traffic Act*.

Confidentiality is also distinct from the idea of privacy.

The legal concept of privacy is wider in scope than the rules of confidentiality of personal health information. Individual privacy interests involve more than medical confidentiality. An individual's interest in informational privacy involves the broad right to control the collection, subsequent disclosure and use of his or her information.

The distinction between confidentiality and privacy has been explained in the following terms:

> The right to privacy protects individuals' rights to control the flow of their personal information. The duty of confidentiality defines professionals' obligations with regard to personal information disclosed to them.[77]

The law has long recognized privacy as an important legal value. In Canada, jurisprudence under section 8 of the *Charter of Rights and Freedoms* identifies personal, territorial and informational privacy as worthy of constitutional protection. With regard to informational privacy, the court has commented:

> "In modern society, especially, retention of information about oneself is extremely important. We may, for one reason or another, wish or be compelled to reveal such information, but situations abound where the reasonable expectations of the individual that the information shall remain confidential to the persons to whom, and restricted to the purposes for which, it is divulged must be protected."[78]

Canadian courts have also found a right to privacy in the protection offered by section 7 of the *Charter* which guarantees the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. More

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[75] *McInerney v MacDonald* [1992] 2 SCR 138 at 129.
[76] *Medical Review Committee v Lim*, (1981) 121 DLR (3d) 575 (MBQB).
[77] BC Freedom of Information and Privacy Association, *Personal Health Information and the Right to Privacy in Canada, An Overview of Statutory, Common Law, Voluntary and Constitutional Privacy Protection*, A FIPA Law Reform Report Prepared by Susan Prosser, BC Public Interest Advocacy Centre, 2000, online: British Columbia Freedom of Information and Privacy Association <https://fipa.bc.ca/library/Medical_Privacy_Rights/Personal_Health_Information_and_the_Right_to_Privacy_in_Canada-May_2000.pdf> at 9 [BC FIPA].
[78] *R v Dyment* , [1988] 2 SCR 417; (1989), 55 DLR (4th) 505, para 22.

specifically, the Ontario Court of Justice (General Division) has expressly recognized a right to privacy over personal health information in the civil law context and found that this right may be protected by section 7 of the *Charter* in certain circumstances.[79]

The law offers redress to those whose privacy rights have been infringed. In Manitoba, *The Privacy Act* makes it a tort to violate another person's privacy, giving rise to a remedy in damages.[80] Unlike similar legislation in other provinces, Manitoba's Act does not insist that the violation be wilful.[81] Although Manitoba's *Privacy Act* has not yet been applied to the collection, use and disclosure of personal health information, the Commission agrees with Professor Irvine in his comment that:

> "...these statutes seem to provide a most straightforward avenue of recourse against a doctor who has in this way broken his professional traditions and duties...it is hard indeed to imagine any judge denying that such an invasion or violation occurs when a doctor reveals confidential information about a patient without lawful excuse."[82]

In a non-medical context, the Ontario Court of Appeal recognized a civil action for damages for invasion of privacy in the face of problems posed by the routine collection and aggregation of highly personal information that is readily accessible in electronic form.[83] The Ontario Superior Court of Justice recently extended the tort of breach of privacy to the medical context, concluding that privacy legislation does not preclude a claim of breach of privacy at common law.[84]

b) Limits on Confidentiality and Privacy

Canadian common law allows exceptions to the duty of confidentiality in circumstances where the safety of individuals or of the public is threatened. In *Halls v Mitchell*, the Supreme Court of Canada stated that the patient's right to require confidentiality is absolute unless there is some paramount reason that overrides it. The court referred to "cases in which reasons connected with the safety of individuals or of the public, physical or moral, would be sufficiently cogent to supersede or qualify the obligation prima facie imposed by the confidential relation."[85]

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[79] *Canadian Aids Society v Ontario*, (1995) 25 O.R. (3d) 388; upheld by the Ontario Court of Appeal, (1996) 31 O.R. (3d) 798; application for leave to appeal to the Supreme Court of Canada dismissed,[1997] SCCA No. 33. See *contra* the earlier case of *Charboneau v College of Physicians and Surgeons of Ontario* (1985) 52 OR (2d) 552, in which the Ontario High Court of Justice found that section 7 of the *Charter* does not entail a right to privacy.

[80] *The Privacy Act*, SM 1987 c P125; CCSM c P125, s 2.

[81] British Columbia, Saskatchewan and Newfoundland's legislation all make it a tort to wilfully violate the privacy of another person. See e.g. *Privacy Act*, RSBC 1996, c 373, s 1(1).

[82] *Canadian Medical Law*, *supra*, note 44, p 240.

[83] *Jones v Tsige*, 2012 ONCA 32; 108 OR (3d) 241.

[84] *Hopkins v Kay*, 2014 ONSC 321; 119 OR (3d) 251.

[85] *Halls*, *supra* note 74 at 136. See also *McInerney*, *supra* note 75 at 154.

In the context of disclosure of confidential health information, the law reflects a need to balance a patient's safety with his or her right to self-determination.[86] It also recognizes both a public and private interest in maintaining confidentiality, which must be weighed against considerations of public safety.[87]

This balancing process is reflected in the case-law. In *Canadian Aids Society v Ontario*, for example, the Ontario Court of Appeal upheld a finding that the mandatory disclosure of blood samples testing positive for HIV, as required under provincial legislation at the time, was a violation of individual privacy. It was nevertheless justified on the basis of an overriding state interest in promoting health, which was paramount.[88]

c) The Personal Health Information Act

In Manitoba, the common law principles of confidentiality of personal health information and privacy interests are codified in *The Personal Health Information Act* ("PHIA").[89] PHIA governs a trustee's collection, use, disclosure retention and destruction of personal health information. It expressly recognizes an individual's right to privacy [90]and prevails over all other enactments unless the other enactment more completely protects the confidentiality of personal health information.[91] The Manitoba Ombudsman is authorized to receive and investigate complaints under PHIA.

A trustee is defined as a health professional, health care facility, public body, or health services agency that collects or maintains personal health information. Physicians, optometrists and Manitoba Public Insurance are all trustees under PHIA.

PHIA defines personal health information to include recorded information about an identifiable individual relating to the individual's heath, or health care history, the provision of health care to the individual, and any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care.[92] The information contained in the reports submitted under section 157 of the HTA qualifies as personal health information under the PHIA.

Section 13 requires that the collection of personal health information be necessary for a lawful purpose and that the trustee shall collect only as much personal health information about an individual as is reasonably necessary to accomplish the purpose for which it is collected.

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[86] *McInerney*, *supra* 75 at 158.
[87] In *W v Egdell*, [1990] 1 All ER 835 at 846, the English Court of Appeal Civil Division found that the medical practitioner's duty of confidentiality is grounded in a public rather than private interest.
[88] *Canadian Aids Society*, *supra* note 78.
[89] *The Personal Health Information Act*, SM 1997, c 51; CCSM c P33.5 [PHIA].
[90] PHIA, s 2(c)(i).
[91] PHIA, s 4(2).
[92] PHIA,s 1(1).

Section 20(1) of the PHIA prohibits a trustee from using or disclosing personal health information except as authorized under Division 3 of the PHIA.

Section 22(1) of the PHIA allows a trustee to disclose personal health information if the individual the information is about has consented to the disclosure. Section 22(2) of the PHIA allows disclosure without consent in various circumstances including where necessary to prevent or lessen a serious and immediate threat to the individual or to public health or safety. Section 22(2) also permits disclosure without consent when authorized or required by an enactment of Manitoba or Canada.

In accordance with privacy requirements, section 22(3) of the PHIA provides that a trustee may disclose information under 22(2) only to the extent the recipient needs to know the information.

G. Confidentiality, Privacy and Section 157 of *The Highway Traffic Act*

The privacy implications of section 157 are apparent. The reporting obligation is an exception to principles of confidentiality and protection of privacy. Disclosure under section 157 of the HTA can occur without the patient's consent in accordance with section 22(2) of PHIA.

While this reflects the fundamental public interest in road safety, it is important that the obligation be framed so as to provide the maximum possible protection of the patient's personal health information.

This section of the report will consider ways to enhance the protection of privacy in the context of the section 157 reporting obligation under four headings: a.) the contents of the section 157 report; b.) the driver's licence requirement; c.) confidentiality of the section 157report; and d.) notice of disclosure.

a) The contents of the section 157 report

The purpose of the disclosure and collection of information under section 157 is to notify MPI when a person has a medical condition which may impair his or her ability to operate a motor vehicle safely. Section 13 of PHIA requires that MPI only collect as much personal health information about an individual as is reasonably necessary to accomplish the purpose for which it is collected. Section 22(3) of PHIA requires that disclosure of personal health information without the patient's consent is only made to the extent that the recipient needs to know the information. These PHIA provisions confirm that the contents of a section 157 report should be limited to information relevant to a person's medical condition that may impair the ability to drive safely.

MPI has produced a template for a section 157(1) report which is available online ("MPI Form").[93] The MPI Form asks the health care professional to provide a brief description of the disease or disability and date of occurrence. It also provides a space in which to make recommendations concerning the need for a second medical opinion, the restriction of driving privileges, or other steps such as a road test.

With regard to the MPI Form, Doctors Manitoba, a division of the Canadian Medical Association, advises physicians to provide information about the patient's disease or disability, but not to make additional recommendations without the patient's consent.[94]

Aside from the MPI Form, there is currently very little guidance available about what information should be included in a section 157 report. This increases the risk that MPI may collect personal health information which is not connected to the purpose of section 157, and that physicians and optometrists may disclose more information than MPI needs to know.

Recognizing that an amendment to section 157 of the HTA can only go so far in addressing this issue, the Commission believes that some changes to the statutory language might help to clarify the appropriate contents of a report filed under that section.

The Commission suggests that the legislation ought to establish a closer connection between the contents of the report and the patient's medical fitness to drive. The section 157 report should consist solely of information about the medical condition that may impair the person's ability to drive. It is important for MPI to be advised of the specific clinical features of the condition that led the physician or optometrist to make the report, but nothing more should be reported. The disclosure and collection of any extraneous information could potentially represent a breach of PHIA's rules.

Yukon's *Motor Vehicles Act* is an example of legislation which ties the information in the report more directly to the purpose of the reporting provision. It provides:

17(3) A medical practitioner shall without acquiring any liability thereby, report to the registrar any medical information relative to the health of a person holding or applying for an operator's licence if the practitioner believes that **the condition in relation to which the information is given** may adversely affect that person's operation of a motor vehicle.[95] (emphasis added)

Comparable language in section 157 may provide guidance to practitioners and assurance to the pubic concerning the privacy implications of the reporting obligation. Privacy considerations

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[93] Manitoba Public Insurance, *Report to the Registrar of Motor Vehicles Concerning the Disease or Disability of Person Pursuant to section 157(1) of The Highway Traffic Act*, online: Manitoba Public Insurance https://www.mpi.mb.ca/en/PDFs/ReporttoRegistrarForm.pdf. [MPI Form].

[94] Doctors Manitoba, *Reporting Medically Unfit Drivers*, online: Doctors Manitoba <http://www.docsmb.org/advocacy-services/web-mpi/72-reporting-of-medically-unfit-drivers>.

[95] *Motor Vehicles Act*, RSY 2002, c 153, s 17(3).

might also dictate some changes to the MPI Form, which currently contemplates the provision of additional information and recommendations.

Recommendation #7

Section 157 of *The Highway Traffic Act* should be amended to make clear that the report should only contain information pertinent to a condition that may impair the patient's ability to operate a motor vehicle safely. The form on which a section 157 report is submitted should request the minimum necessary amount of personal health information.

b) The Driver's Licence Requirement

Unlike most other provincial reporting legislation, Manitoba's statute requires that the health care professional submit a report only in respect of a person who is the holder of a valid driver's licence. This has implications for both the effectiveness of the legislation and the protection of privacy within the reporting system.

The driver's licence requirement creates a gap in coverage to the extent that practitioner may not always know if the patient is the holder of a valid driver's licence. In circumstances where the practitioner is unwilling to report, this requirement provides a legitimate excuse for non-compliance.

On the other hand, privacy considerations may be engaged if there is no limitation on who may be reported. Sending private medical information to MPI about a person who does not have a driver's licence is arguably inconsistent with section 22(3) of PHIA which limits disclosure to information the recipient needs to know.

In this regard, most other provincial statutes refer to the age of the patient. In British Columbia, Newfoundland, Ontario and Prince Edward Island, any person 16 years of age or over may be reported. [96] In Saskatchewan, Northwest Territories and Nunavut, any person over 15 years of age may be reported.[97] New Brunswick's Act refers to a person who is apparently of driving age.[98]

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[96] *Motor Vehicle Act*, RSBC 1996, c 314, Part 4, s 230(1); *Highway Traffic Act*, RSNL 1990, c H-3, s 174.1(1); *Highway Traffic Act*, RSO 1990, c H.8, s 203(1); *Highway Traffic Act*, RSPEI 1988, c H-5, s 233(1).
[97] *Traffic Safety Act*, SS 2004, c T-18.1, s 283(1)(a); *Motor Vehicles Act*, RSNWT 1988, c M-16, s 103(1).
[98] *Motor Vehicle Act*, RSNB 1973, C M-17, s 309.1(1).

In Alberta and Nova Scotia, both voluntary reporting jurisdictions, there is no restriction on who may be reported, provided the legislative criteria for reporting are met.[99]

The Commission is not aware of a significant problem of under-reporting due to the driver's licence requirement, and does not offer any recommendations in this regard. It highlights the issue here with an invitation to policy-makers to consider whether legislative change is required to secure an appropriate balance between compliance and privacy considerations.

c) Confidentiality of the Section 157 Report

To ensure compliance with both common law and statute law privacy requirements, the report submitted to the registrar under section 157 must itself be kept confidential to the greatest extent possible. Some sources suggest that statutory provisions expressly protecting the confidentiality of the report may also encourage reporting.[100]

i. Public Access to the Report

Most reporting provisions include language that attaches privilege to the report and restricts the uses to which it can be put. Manitoba's section 157(7) of the HTA is an example. It provides that the report is privileged and for the information of the registrar and the medical review committee only, and is admissible in a court proceeding only as evidence to prove compliance with the reporting requirement.

Some Canadian jurisdictions provide a more emphatic protection to reports submitted under equivalent reporting provisions. In Ontario, Newfoundland& Labrador, Northwest Territories, Nunavut, Saskatchewan and Prince Edward Island, for example, the legislation expressly provides that the report is not open for public inspection.[101]

In the Commission's view, Manitoba's legislation makes clear that MPI is a trustee under PHIA and must comply with all of a trustee's obligations. No amendment is necessary in this regard.

ii. Driver's Access to the Report

Canadian jurisdictions have not adopted a uniform approach to the disclosure of reports filed under the equivalents of section 157 of *The Highway Traffic Act*. In Alberta, where reporting is discretionary, the legislation prohibits the identification of the person providing the information in the report unless that person authorizes the release of identifying information in writing.[102] In British Columbia, the Office of the Superintendent of Motor Vehicles generally does not release the report or information supplied in the report to the driver. The exception is that if a medical

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[99] *Traffic Safety Act*, RSA 2000, c T-6, s 60.1; *Motor Vehicle Act*, RSNS 1989, c 293, s 279.
[100] Solomon, *supra* note 42 at 9.
[101] *Highway Traffic Act*, RSO 1990, c H8, s 20.3(3); *Highway Traffic Act*, RSNL 1990, c H-3, s 174.1(3); *Motor Vehicles Act*, RSNWT 1988, c M-16, s 313(1)(a); *Traffic Safety Act*, SS 2004, c T-18.1, s 283(4)(b); *Highway Traffic Act*, RSPEI 1988, c H-5, s 233(6).
[102] *Traffic Safety Act*, RSA 2000, c T-6, s 60.1.

condition is disclosed in the report, the condition will be disclosed to the driver. An unsolicited report filed by a medical professional cannot be disclosed without giving the author of the report an opportunity to express concerns about disclosure.[103]

Section 5(1) of the PHIA gives an individual the right, on request, to examine and receive a copy of his or her personal health information maintained by a trustee. Section 11(1) of PHIA sets out certain exceptions to the right of access, providing that a trustee can refuse access if knowledge of the information could reasonably be expected to endanger the health or safety of the individual or another person, or if disclosure of the information could reasonably be expected to identify a third party, other than another trustee, who was supplied the information in confidence under circumstances in which confidentiality was reasonably expected.

Manitoba's *Highway Traffic Act* is silent on this question, but the MPI Form on which section 157 reports are submitted indicates that the information in the form will be disclosed by MPI to the patient upon request unless otherwise directed. The form's language implies that the person making the report may direct MPI to restrict access to the report.

The broad authority to deny access suggested by this language on the MPI Form does not fit neatly within PHIA's exceptions to access. Since both MPI and the physician or optometrist making the report are trustees, section 11(1)(c) does not justify denying access on the basis that the disclosure will identify a third party. The language on the Report also does not clearly indicate that disclosure will only be refused if it could result in harm to the individual or a third party, which is the only practical basis on which access could be refused.

In light of the important privacy and access interests at stake, the Commission suggests that the legislation make clear that the section 157 report will be provided to the patient on request unless one of the PHIA's exceptions to access applies. The MPI Form itself should also be clear that the report will be disclosed to the patient on request unless the person making the report believes that its disclosure could reasonably be expected to endanger the health or safety of the individual or the person making the report.

Recommendation #8

Section 157 of *The Highway Traffic Act* and any relevant guidance documents should make clear that the report filed under section 157 will be disclosed to the patient on request unless one of the exceptions to access provided in PHIA apply.

[103] British Columbia, Ministry of Justice, Office of the Superintendent of Motor Vehicles, Fact Sheet "Unsolicited Driver Fitness Reports" (July 2012), online: British Columbia Ministry of Justice < http://www.pssg.gov.bc.ca/osmv/shareddocs/factsheet-unsolicited-driver-reports.pdf>.

d) Notice of Disclosure

Policy makers recognize that informed consent to the collection, use and disclosure of individuals' personal health information is at the core of privacy protection.[104]. Consent is an important means by which individuals can exercise control over their personal information."[105]

Section 22 of PHIA allows disclosure of personal health information without consent in only very limited circumstances including when authorized or required by an enactment of Manitoba or Canada. There is therefore no legal requirement that the medical practitioner or optometrist obtain the patient's consent before submitting a section 157 report.

Even in circumstances where consent is not required, physicians' ethical rules and guidelines require them to take all reasonable steps to inform the patient that confidentiality will be breached.[106] There is, however, no comparable legal obligation. The law in Manitoba does not impose a specific statutory obligation on medical practitioners and optometrists to advise the patient that a section 157 report is being submitted.

Under the current statutory reporting scheme, it is therefore legally possible for MPI to collect an individual's personal health information without the person ever knowing. In the Commission's view this is a violation of the spirit, if not the letter, of PHIA.

PHIA imposes a duty to take reasonable steps to notify the individual when his or her personal health information is collected, but not when it is disclosed. Section 15(1) of PHIA provides:

> 15(1) A trustee who collects personal health information directly from the individual the information is about shall, before it is collected or as soon as practicable afterwards, take reasonable steps to inform the individual
>
> (a) Of the purpose for which the information is being collected:

This section does not apply to the section 157 reporting requirement because MPI does not collect the personal health information directly from the individual the information is about. There is no equivalent legal duty to take reasonable steps to notify the individual when his or her personal health information is disclosed.

Some other provincial privacy and access statutes impose a positive obligation on the trustee to take reasonable steps to inform an individual about any disclosure of the individual's personal

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[104] Canadian Medical Association, "Putting Patients First: Comments on Bill C-6" (Submission to the Senate Standing Committee on Social Affairs, Science and Technology, November 29, 1999), cited in BC FIPA, *supra* note 77 at 12.
[105] See BC FIPA, *supra* note 77 at 12-13.
[106] Code of Conduct, *supra* note 13, s 26. The Manitoba Association of Optometrists Code of Ethics does not expressly refer to this obligation.

health information made without the individual's consent, within a reasonable period of time.[107] These provisions only apply where the individual would have a right to access the report under the privacy and access legislation. It is reasonable to expect that if access would be denied on the basis of a threat of harm to the physician, the physician would not be under an obligation to advise the patient that confidentiality is being breached.

The Commission suggests that a similar provision in either *The Highway Traffic Act* or PHIA would be consistent with the spirit of PHIA and respectful of individual Manitobans' privacy interests. Some professional ethical codes address this requirement, but these are generally unknown to the individual patient and provide little opportunity for legal redress. For greater transparency and accountability, the Commission recommends an express legal obligation on the part of the health care professional to take reasonable steps to advise a person when a section 157 report is submitted.

Recommendation # 9

The law in Manitoba should impose an express obligation on the health care professional to take reasonable steps to advise the person in respect of whom a report is submitted that the health care professional is submitting or has submitted a report under section 157 of *The Highway Traffic Act*.

[107] See *The Health Information Protection Act*, SS 1999, c H-0.021, s 10(1); *Personal Health information Protection Act*, 2004, SO 2004, c 3, Sch A, s 16(2).

CHAPTER 5- DRAFT SECTION 157 (1) OF THE HIGHWAY TRAFFIC ACT

In this report, the Commission has suggested a number of recommendations for amendments to section 157 (1) of *The Highway Traffic Act* and related legislation. By way of summary and clarification, the following draft definitions and draft section 157(1) are offered to illustrate how some of the Commission's recommendations could be implemented in legislative language.

Definitions

"health care professional" means a person designated a health care professional in the regulations

"medical condition" means medical condition as defined in The Canadian Council of Motor Transport Administrators, Determining Driver Fitness in Canada Part I

Section 157 (1)

Every health care professional shall report to the registrar the name, address and medical condition, or any significant change in a previously observed medical condition, of any person attending on the health care professional for examination or treatment if:

a.) the person in respect of whom the information is reported holds a valid driver's licence; and

b.) it is the reasonable opinion of the health care professional that the medical condition in relation to which the information is reported may impair the person's ability to operate a motor vehicle safely with the class of licence or permit held by the person.

CHAPTER 6- SUMMARY OF RECOMMENDATIONS

Recommendation #1

Section 157 of *The Highway Traffic Act* should be amended to delete the term "disease or disability" and replace it with "medical condition". *The Drivers' and Vehicles Act* should be reviewed to ensure that the term "medical condition" can appropriately replace "disease and disability" in all sections. (p 15)

Recommendation #2

Section 157 of *The Highway Traffic Act* should be amended to delete the term "may be expected to interfere with" and replace it with "may impair". (p 17)

Recommendation #3

Section 157 of *The Highway Traffic Act* should be amended to require that the person filing the report has formed a reasonable opinion about the patient's condition and its effect on his or her ability to drive safely. (p 18)

Recommendation #4

The duty to report under section 157 should be imposed on those who are in a reasonable position to form an opinion about a patient's fitness to drive. The current definition of duly qualified medical practitioner should be reconsidered with reference to the definitions in *The Regulated Health Professions Act*. (p 19)

Recommendation #5

Section 157 of *The Highway Traffic Act* should make clear that every health care professional identified in the section has an independent duty to report. (p 20)

Recommendation #6

The Highway Traffic Act and *The Drivers and Vehicles Act* should be amended to make the connection between the medical fitness to drive provisions in the two statutes more apparent. (p 21)

Recommendation #7

Section 157 of *The Highway Traffic Act* should be amended to make clear that the report should only contain information pertinent to a condition that may impair the patient's ability to operate a motor vehicle safely. The form on which a section 157 report is submitted should request the minimum necessary amount of personal health information. (p 28)

Recommendation #8

Section 157 of *The Highway Traffic Act* and any relevant guidance documents should make clear that the report filed under section 157 will be disclosed to the patient on request unless one of the exceptions to access provided in PHIA apply. (p 30)

Recommendation #9

The law in Manitoba should impose an express obligation on the health care professional to take reasonable steps to advise the person in respect of whom a report is submitted that the health care professional is submitting or has submitted a report under section 157 of *The Highway Traffic Act*. (p 32)

This is a report pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. c. L95, signed this 13th day of February, 2015.

"Original Signed by"
Cameron Harvey, President

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Jacqueline Collins, Commissioner

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REPORTING UNDER SECTION 157 OF *THE HIGHWAY TRAFFIC ACT*

EXECUTIVE SUMMARY

Section 157 of Manitoba's *Highway Traffic Act* requires duly qualified medical practitioners and optometrists to report a person's details to the registrar of motor vehicles when the person holds a valid driver's licence and has a disease or disability that may be expected to interfere with the safe operation of a motor vehicle. While this mandatory reporting provision serves the important purpose of identifying individuals who may be unfit to drive for health-related reasons, some problems have been identified with respect to compliance with the provision.

In this report, the Manitoba Law Reform Commission considers ways to improve the effectiveness of the reporting system contemplated by section 157 of *The Highway Traffic Act*, with a focus on possible changes to the legislative language rather than the broader administrative and regulatory environment in which the provision operates. The report concludes by recommending changes to the language of section 157 that would improve the clarity and effectiveness of the legislation. The report also identifies confidentiality and privacy issues that are engaged in the reporting system, and makes recommendations that take into account accepted legal principles of confidentiality and privacy.

PRODUCTION DE RAPPORTS EN VERTU DE L'ARTICLE 157 DU *CODE DE LA ROUTE*

RÉSUMÉ

L'article 157 du *Code de la route* du Manitoba exige que des médecins qualifiés et des optométristes signalent au registraire des véhicules automobiles les données personnelles d'une personne titulaire d'un permis de conduire valide et qui est atteinte d'une maladie ou d'une incapacité pouvant vraisemblablement nuire à la conduite sécuritaire d'un véhicule automobile. Si cette disposition obligatoire sur la présentation de rapports a pour objectif important d'identifier les personnes qui pourraient être inaptes à conduire pour des raisons de santé, certains problèmes ont été relevés concernant le respect de cette disposition.

Dans le présent rapport, la Commission manitobaine de réforme du droit étudie des moyens d'améliorer l'efficacité du système de production de rapports en application de l'article 157 du *Code de la route*, en mettant notamment l'accent sur des modifications possibles à la terminologie législative, plutôt qu'à l'environnement administratif et réglementaire plus large dans lequel s'inscrit la disposition. Le rapport se termine par des recommandations de changements à apporter à la terminologie de l'article 157 en vue d'améliorer la clarté et l'efficacité de la loi. Le rapport relève également des problèmes de confidentialité et de protection des renseignements personnels figurant dans le système de production de rapports, et formule des recommandations qui tiennent compte des principes de droit reconnus en matière de confidentialité et de protection des renseignements personnels.